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MISSING CHILDREN

A REPORT to the GOVERNOR

MARCH 1985

MISSING CHILDREN

a Report to the Governor

GOVERNOR'S CRIME COMMISSION

DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY

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March 15, 1985

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MISSING CHILDREN

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MISSING CHILDREN

INTRODUCTION

On October 25, 1984, Executive Order 112 was signed creating the North Carolina Missing Children's Center in the Department of Crime Control and Public Safety and directing the Governor's Crime Commission to study seven legislative recommendations from the Governor's Task Force on Missing Children and seven legislative recommendations from the Governor's Advocacy Council on Children and Youth.

The Center has been established in the Victim and Justice Services Division of the Department of Crime Control and Public Safety. The Governor's Crime Commission has studied the fourteen legislative issues and is presenting the Commission's recommendations in this report.

THE ISSUE

The missing children issue involves two major concerns: how children become missing and the dangers the children are exposed to while they are missing. Children are considered missing if they are away from home without parental or custodial permission. They may become missing by voluntarily leaving or through abduction either by non-custodial parents or by individuals neither known to nor approved of by the children or the children's families.

The specific number of missing children in North Carolina is not known but work has begun to accumulate the information. Trends are known. For example, most missing children leave home voluntarily and are labeled runaway. A large group of missing children are missing because of non-custodial parental kidnapping. Children that are missing because of individuals not known to or approved of by the children or their families account for the smallest group.

Of equal importance to the concern of how children become missing is the concern of the dangers they may be exposed to while they are missing. Children living away from home must find means to support themselves. If they are not fortunate enough to locate good shelter homes, be provided for by good families, or find employment, they can become victims. Victimization takes many forms, including drug abuse and sexual exploitation through prostitution or pornography. Children may be abducted by pedophiles and used sexually by the abductor or even be murdered.

Some of these children may be exposed to exploitation if they are returned home. As many as 60% of runaways may do so to avoid victimization they receive at home.

Protection of our children should include ensuring that caretakers (parents, agencies, schools) create safe environments for children and ensuring that our judicial system exercises utmost caution not only to safeguard defendants' rights but also to protect child victims.

RECOMMENDATIONS

The Governor's Crime Commission supports the work of the North Carolina Missing Children's Information Center as it coordinates responses to reports of missing children and it compiles information on the extent of the problem and the resources available to respond to the needs of these children and their families. The Commission further supports the work of the Crime Prevention Division in encouraging child safety protection programs. We recommend that a booklet be prepared by the Department of Crime Control and Public Safety for educating day care operators, youth administrators, and school administrators to the danger of pedophiles seeking employment around children and the necessity to do criminal record checks on potential employees.

Additionally, the Governor's Crime Commission recommends legislative action for child protection, child victim testimony, and reform of prior adversary hearing procedure in obscenity and pornography cases.

Child Protection

ISSUE: The current definition of child abuse does not include the child used in a sexual performance or the promotion of such a performance. There is no separate provision to punish the use of a child for prostitution. Penalties for child abuse and child sexual performance should be harsher. Finally, violation of a child custody order is a crime in North Carolina only when the child is taken outside the State.

EXPLANATION OF THE ISSUE: The Division of Social Services investigates and reports sexual exploitation of a child by a parent or caretaker only if the caretaker performed a sexual act with the child but not if the child was used in pornographic pictures that feature only the child.

The definition of prostitution does not make special reference to child prostitution or assignation. In order to discourage the use of a child in prostitution, there should be a provision to distinguish, by definition and by penalty, that which involves children from that which involves consenting adults.

Penalties for child molesting, sexual child abuse, and child sexual exploitation are limited by the fact that these crimes are typically punished as Class I (five year) felonies, even though the offenses are at least as damaging to children and society as, for example, felonious breaking or entering, which is a Class H felony.

G.S. 14-320, known as the "child snatching" law, facilitates the return of the child to its custodial parent if the child is taken out of state. If, however, the child is abducted by the non-custodial parent but kept within North Carolina, there is no remedy within the criminal law, and the available civil remedies are inadequate.

RECOMMENDATION: The Governor's Crime Commission recommends that the General Assembly enact omnibus legislation to protect children by expanding the definition of child abuse, by making the use of a child for prostitution a felony, by increasing the penalties for sexually using children, and by allowing for prosecution of intrastate, non-custodial kidnapping.

Child Protection

A BILL TO BE ENTITLED
THE CHILD PROTECTION ACT OF 1985.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-517(1) Abused Juveniles is amended by inserting a new subdivision cl between subdivisions c and d to read:

"cl. Uses a child or allows the use of a child in a sexual performance or the promotion of such a performance; or".

Sec. 2. G.S. 14-190.12 Sexual performance by child is amended by rewriting the first sentence of subsection (a) to read: "(a) The use of a child in a sexual performance or the promotion of such a performance by a child shall be punished as a Class H felony."

Sec. 3. Chapter 14 of the General Statutes is amended by adding a new section 208.1 to read:

"§ 14-208.1. Child prostitution or assignation.

Any person over the age of 18 found guilty of prostitution or assignation in the first or second degree under G.S. 14-204 and G.S. 14-207 when the prostitution or assignation involved a person under the age of 18 shall be punished as a Class H felon."

Sec. 4. G.S. 14-318.4 is amended by deleting the phrase "is guilty of child abuse and shall be punished as a

Class I felon" where it appears in subsections (a) and (a1) of the section and replacing with the phrase "is guilty of child abuse and shall be punished as a Class H felon" in both of those places, and by deleting the phrase "Class I felon" as it appears in subsection (a2) and replacing it with: "Class H felony".

Sec. 5. Chapter 14 of the General Statutes is amended by inserting a new § 14-320.2 to read:

"§ 14-320.2. Interfering with child custody order.

When any federal or state court in the United States shall have awarded either temporary or permanent custody of a child under the age of 16 years, any person who takes or keeps the child in violation of the order without consent of the custodian is guilty of a misdemeanor."

Sec. 6. This act shall become effective October 1, 1985.

Child Victim Testimony

ISSUE: Child victims of rape and other sexual abuses now must testify in open court, in the presence of the alleged abuser and many others, regardless of the emotional damage this does to the child and regardless of the fact that special provisions could be made to protect the health of the child without impairing the procedural rights of the defendant.

EXPLANATION OF THE ISSUE: It is necessary in most instances for children to testify in open court about the abuses, both physical and sexual, that they have suffered if there is to be a conviction. The child victim on the witness stand is a dreadful predicament. Children are unfamiliar with courtroom procedure, and must answer the most embarrassing questions before strangers in the courtroom including the jury and sometimes an audience. The person they accuse is also visible, face to face.

Preserving the integrity of the child's testimony while protecting the defendant's right to confront witnesses as assured by the Sixth Amendment of the United States Constitution is difficult, but is crucial to justice. Allowing the child to give testimony in a more relaxed setting can help to preserve the honesty of the child's testimony. A procedure that allows the prosecutor and the defendant's counsel to be present with the child and provides the presiding judge and the defendant access to the examination and the lawyers is now technologically feasible.

This will allow videotaping or closed circuit transmission of the child's testimony. No suggestion is being made that this procedure should replace the child testifying in an open courtroom if the integrity of the testimony would be better preserved that way.

RECOMMENDATION: The Governor's Crime Commission recommends that the General Assembly enact legislation to allow for the electronic transmission or recording of child victim testimony which protects the defendant's right to confront the witnesses against him or her.

Child Victim Testimony

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE ELECTRONIC TRANSMISSION OR RECORDING OF
THE TESTIMONY OF CHILDREN IN CASES OF PHYSICAL OR SEXUAL
ABUSE OF CHILDREN.

The General Assembly of North Carolina enacts:

Section 1. Article 73 of Chapter 15A of the
General Statutes is amended to add a new G.S. 15A-1244 to
read:

"§ 15A-1244. Electronic transmission or recording of
testimony of children in cases of
physical or sexual abuse of children.

(a) Coverage of Section. This section applies to
prosecutions in which the victim is a child under the age of
thirteen years and the defendant is charged with child abuse
under G.S. 14-318.2 or 14-318.4, an offense under Article 7A
of Chapter 14, crime against nature under G.S. 14-177, or
incest under G.S. 14-178 or 14-179. This section also
applies to any offense being jointly tried with one of these
offenses.

(b) Electronic Transmission of Testimony. In a
criminal prosecution covered by this section, the judge may,
on the motion of either the State or the defendant, order
that the testimony of the child or of any witness under the
age of thirteen years be taken in a room other than the
courtroom and be televised by closed circuit equipment in
the courtroom to be viewed by the court and the finder of

fact in the proceeding. Only the attorneys for the State and the defendant, persons necessary to operate the equipment, and any person whose presence would contribute to the welfare and well-being of the child may be in the child's presence during the testimony. The judge must be able to communicate from the courtroom to those in the room with the child. Only the attorneys and the judge may question the child. The persons operating the equipment must be confined to an adjacent room or behind a screen or mirror that permits them to see and hear the child during the testimony, but does not permit the child to see or hear them. The judge must permit the defendant to observe and hear the testimony of the child in person and to communicate with his attorney at appropriate intervals concerning the testimony, but must ensure that the child cannot see or hear the defendant.

(c) Videotape Recording of Testimony. In a criminal prosecution covered by this section, the judge may, on the motion of either the State or the defendant, order that the testimony of the child or of any witness under the age of thirteen years be taken outside the courtroom and be recorded for showing in the courtroom before the court and the finder of fact in the proceeding. Only the judge and those persons permitted to be present at the taking of testimony under subsection (b) of the section may be in the child's presence during the taking of the child's testimony, and the persons operating the equipment must be confined

from the child's sight and hearing as provided in subsection (b). The judge must ensure that:

- (1) The recording is both visual and aural and is recorded on film or videotape or by other electronic means;
- (2) The recording equipment is capable of making an accurate recording, the operator is competent, and the recording is accurate;
- (3) Each voice on the recording is identifiable; and
- (4) Each party is afforded an opportunity to view the recording before it is shown in the courtroom.

(d) Testimony of the Child Not Required in Courtroom.

If the judge orders the testimony of a child to be taken under subsection (b) or (c) of this section, the child may not be required to testify in court at the proceeding for which the testimony was taken.

Sec. 2. This act shall become effective October 1, 1985.

Obscenity Hearings

ISSUE: North Carolina law unnecessarily restricts prosecutions relating to obscene materials. The rule barring prosecution until after the alleged pornographer sells obscene material again, after it has been ruled obscene by the court, prevents the State from prosecuting the least ethical and most exploitative distributor--the one who merely changes the front cover on the book and goes on flouting the law.

EXPLANATION OF ISSUE: The State may prosecute someone for disseminating obscenity in a public place only if the person disseminates the material after a court has found it to be obscene, in an open hearing, after notice to the owner of the material, etc. Such a hearing procedure is an appropriate way to protect against the seizure of, for example, all copies of an allegedly obscene work of fiction before a court determines whether it is in fact obscene and not an artistic expression protected by the First Amendment. The State should be required to obtain such a court ruling before removing art or ideas from circulation by force.

North Carolina has extended that requirement to prevent the seizure of single copies of material as evidence in a criminal case, to bar prosecution until after resale of the specific material ruled obscene, and even to prohibit a law enforcement officer from buying a copy in the course of an investigation. That is not constitutionally necessary and has the unintended consequence of giving special protection to the vendor willing to sell the same obscene magazine under new cover after the court rules on its earlier form. Admirable concern for the free exchange of ideas has led to the situation where only principled business people could be prosecuted, because there is an automatic loophole available to dishonest people wanting to evade the law.

Children who are victims of pornography have brought attention to this problem in a special way. There is greater consensus about the harm child pornography causes, directly and indirectly, than about the issue in general, but the flaw in the pornography law should be corrected generally and responsibly.

RECOMMENDATION: The Governor's Crime Commission recommends that the General Assembly enact legislation amending the prior adversary hearing requirement in the pornography law to allow prosecution to begin at the same time the evidence is seized.

Obscenity Hearings

A BILL TO BE ENTITLED AN ACT TO REVISE THE ADVERSARY HEARING REQUIREMENT IN OBSCENITY CASES AND TO EXTEND THE PROCEDURE TO CERTAIN SEIZURES OF SEXUALLY ORIENTED MATERIALS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-190.2 is rewritten to read:

"§ 14-190.2. Procedure for adversary hearing before
certain seizures of obscene or sexually
oriented material.

(a) The purpose of this section is to provide an adversary determination of the question whether material is obscene or sexually oriented before there is any seizure that may constitute a prior restraint as to the material.

A seizure constitutes a prior restraint as to material when the only copy of an item that is allegedly for unlawful dissemination, display, or promotion is seized or when multiple copies of such an item are seized. If a copy of an item is seized for evidentiary examination and, after examination or copying or both, is returned with sufficient promptness that there is not substantial restriction on the dissemination, display, or promotion of the item, this seizure does not constitute prior restraint. For the purposes of this section, the term "sexually oriented material" includes material the display of which is prohibited under G.S. 14-150.10 and 14-190.11 and the promotion of which is prohibited under G.S. 14-190.12.

(b) The public policy of the State requires that all proceedings for adversary determinations authorized by this section shall be examined, heard, and disposed of with the maximum promptness and dispatch commensurate with the requirements of the Constitution of the United States and the Constitution of North Carolina.

(c) When a law enforcement officer has reasonable cause to believe that a person is engaged in unlawful dissemination, display, or promotion of obscene or sexually oriented material and the officer determines that it is appropriate in carrying out his duties to make a seizure that may constitute a prior restraint, he shall before seizure notify a prosecutor for the prosecutorial district in which the material is located. If the prosecutor determines that the interests of justice will be served by the seizure, he shall submit a written complaint to any superior or district court judge presiding in that district. The prosecutor shall attach to the complaint a copy of each item that is allegedly obscene or sexually oriented if it is available. The complaint shall:

- (1) Be directed against, as a respondent or respondents, any person believed to be engaged in the unlawful dissemination, display, or promotion of material.
- (1a) Set out a description of the material by name, description, or volume and issue, as appropriate.

- (2) Allege whether the material is believed to be obscene or sexually oriented, and allege the unlawful acts of dissemination, display, or promotion in which any respondent is believed to be engaged.
- (3) Repealed.
- (4) Seek an adjudication that the material is obscene or sexually oriented, and has been unlawfully disseminated, displayed, or promoted, and that the unlawful dissemination, display, or promotion is likely to continue.
- (5) Seek a temporary restraining order prohibiting any respondent from destroying, altering, or removing, or causing or permitting the destruction, alteration, or removal of, the described material.
- (6) Seek a warrant to search for and seize the described material.

(d) Upon receipt of a complaint from the prosecutor, the judge shall:

- (1) Issue a summons to be served upon each respondent commanding that the respondent appear before that judge at a specified time and place for a hearing at which he shall be required to show cause why the relief sought by the prosecutor in the complaint should not be granted. Service of the summons shall be as prescribed in G.S. 1A-1, Rule 4(j), of the Rules of Civil Procedure. The

hearing may not be scheduled for a time earlier than 48 hours after the issuance of the summons or later than 96 hours after issuance.

- (2) Issue a subpoena under G.S. 1A-1, Rule 45, of the rules of Civil Procedure, commanding the appropriate respondent or respondents to produce a copy of each item described in the complaint if the item was not attached to the complaint.
- (3) Issue a temporary restraining order prohibiting any respondent from destroying, altering, or removing, or causing or permitting the destruction, alteration, or removal of the material described in the complaint. The judge shall provide an exception for items sold in the normal course of business so long as at least one copy of each item described is retained for evidentiary purposes at the hearing. A respondent must be prepared to document fully that all sales of items subject to this order were in fact made in the normal course of business.
- (4) Insure that each respondent is afforded a full and fair hearing upon the issues raised by the prosecutor's complaint. In particular, a respondent must be afforded the right to counsel, the right to confrontation and cross-examination of witnesses, the right to present witnesses including expert witnesses in his behalf, and the

protection of all other rights granted a respondent by the Constitution of the United States or the Constitution of North Carolina.

(4a) If no respondent appears at the scheduled hearing and the judge determines that at least one respondent with a substantial interest in the described material was properly served with the summons specified in subdivision (1), the judge shall hold the hearing and rule upon the issues raised by the complaint based upon the evidence adduced by the prosecutor.

(5) Render a judgment on the issues raised by the complaint within 48 hours following the conclusion of the hearing.

(e) After the hearing, the judge shall make findings upon the issues raised by the complaint and enter a judgment.

With respect to each item alleged to be obscene or sexually oriented, the judge shall dismiss the complaint unless he shall find as to the item:

- (1) It is obscene or sexually oriented;
- (2) It had been unlawfully disseminated, displayed, or promoted; and,
- (3) The unlawful dissemination, display, or promotion is likely to continue.

If the judge makes the above findings as to one or more items, the judge shall issue a warrant to search for and seize all copies of the item as to which the findings were



made. The warrant shall describe with reasonable certainty the person, premises or other places to be searched, and the material for which the search is to be made and which is to be seized. The warrant must be signed by the issuing judge and bear the date and hour of its issuance above his signature.

(f) Repealed.

(g) Any respondent who shall violate any provision of this section or any order issued under any provision of this section shall be subject to proceedings for criminal or civil contempt or both, as appropriate, under the provisions of Chapter 5A of the General Statutes.

(h) Repealed.

(i) Repealed.

(j) The State or any respondent may appeal to the Court of Appeals from a judgment. The appeal shall not stay the judgment. The appeal procedure shall be that applicable to review of judgments in civil cases.

(k) Repealed.

(l) If a defendant is convicted of disseminating obscenity, promoting sexually oriented material in the course of promoting a sexual performance by a child, disseminating sexually oriented material to a minor, or displaying sexually oriented material, the sentencing judge may:

(1) Order the destruction of all obscene or sexually oriented material to which the conviction pertains

that has been seized under this section or is otherwise in the possession of the State.

(2) Order the seizure and destruction of all obscene or sexually oriented material to which the conviction pertains that was unlawfully disseminated, displayed, or promoted.

(3) Order the seizure and the destruction of all obscene or sexually oriented material to which the conviction pertains that the defendant possessed for the purpose of unlawful dissemination, display, or promotion.

(m) If an adversary hearing has been held under the authority of this section and the judgment in the hearing is that material is subject to seizure, a prosecutor may petition the appropriate judge for an order for the destruction of all such material in the State's possession, and for the seizure and destruction of other such materials, if:

- (1) There has been no subsequent reversal of the findings made at the adversary hearing;
- (2) There is no further opportunity for appeal by any respondent or intervenor with respect to these findings;
- (3) There are no other unresolved civil or criminal proceedings pending or contemplated by the State involving the material;

- (4) There is no further evidentiary use to be made of the materials; and
- (5) In no proceedings subsequent to the adversary hearing was any finding made that was inconsistent with the findings required under subsection (e) of this section.

The appropriate judge under this subsection is any judge who has finally disposed of any proceedings involving the obscene or sexually oriented material subsequent to the adversary hearing. If there have been no subsequent proceedings, any judge of the same trial division as the judge who conducted the adversary hearing is an appropriate judge if he would have been authorized to conduct the hearing under the terms of subsection (c)."

Sec. 2. This act shall become effective October 1, 1985.



